DIVISION OF DISABILITY AND ELDER SERVICES

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Department of Health and Family Services

Date: May 5, 2006

DDES-**BQA –06-005**
Supersedes DDES-BQA – 04-020
and DDES-BQA-05-005

TO: Nursing Homes NH 04
Facilities for the Developmentally Disabled FDD 03

FROM: Jan Eakins, Chief
Provider Regulation and Quality Improvement Section

VIA: Otis Woods, Director
Bureau of Quality Assurance

Informal Dispute Resolution (IDR) Update

OVERVIEW This memo describes the revised procedure under which health care facilities may work to informally resolve differences they have with citations issued by the Bureau of Quality Assurance. Substantive revisions are bolded. The procedure takes effect May 8, 2006. Significant changes include:

1. **Facilities have up to ten days following receipt of the Statement of Deficiencies to request IDR and provide supporting documentation to MPRO. It is no longer necessary to fax an initial request for IDR to BQA Central Office and MPRO within three days following receipt of the SOD.**

2. **A copy of MPRO's recommendation will be sent to the facility upon completion of the IDR.**

On January 1, 1995, the Bureau of Quality Assurance (BQA) implemented a standardized process for informally resolving disagreements facilities may have with citations issued by BQA surveyor(s). Since then, we have refined this process (BQA Memo 03-013 and 04-020). This memo reflects the MOST RECENT changes to the process.

The Informal Dispute Resolution (IDR) process has been developed with the expectation that all parties will act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

The goals of informal dispute resolution are to ensure that the Statement of Deficiencies (SOD) and the federal and state data systems accurately identify a provider's state of compliance relative to the regulations, and to resolve differences:

- Outside of formal litigation, thereby avoiding the costs of protracted litigation (however, the process does not preclude a facility from requesting a hearing where applicable);
- In a timely manner, while the issues and facts are still fresh; and
- Prior to the entry of the survey results into the federal data system.

With the approval of the Centers for Medicare and Medicaid Services (CMS), the BQA contracted with the Michigan Peer Review Organization (MPRO, Farmington Hills, MI) to conduct independent review of all IDR requests, effective August 16, 2004. MPRO uses a systematic review process and a decision algorithm to arrive at a determination. This includes reviewing the regulatory standard, the statement of deficiency, and information provided by the health care facility. If an expert opinion is requested, MPRO can draw on a cadre of consultant reviewers to provide advice and judgments on specific aspects of a cited deficiency. Upon completion of IDR reviews, MPRO will provide the appropriate BQA Regional Office with written recommendations that may include the following: withdraw citations, keep citations as written, modify or withdraw examples from the citation(s), and lower or raise the state classification.

The process of IDR renders a *de novo* (new) look at disputed citations. The process does not alter or delay the required timetables associated with licensure or certification termination or other adverse action. This informal process does not limit the legal appeal processes that are afforded facilities under state and federal laws and regulations. Allegations concerning survey team conduct during the survey should not be reported under this process, but rather to the Regional Field Operations Director (RFOD) or Resident Care Review Section Chief.

The IDR process begins during the survey with communication between the surveyor(s) and the facility. The survey coordinator meets with the provider daily, or as needed, to share preliminary survey findings. Federal survey protocols dictate the information that can be shared before exit, especially if it impacts on the eventual scope or severity of a deficiency. If you think this process is not occurring during a survey, we ask that you immediately contact the Regional Field Operations Director or Field Operations Supervisor assigned to your facility. Surveyors also meet with the provider at the exit conference to present a preliminary summary of the survey findings.

We encourage facilities to use these meetings to provide additional clarifying facts and information to surveyors, so that material can be considered in the final decision-making process. Facilities may also provide additional information to the survey team between the date of the exit conference and the date any deficiencies are served.

Once the SOD is received, facilities that disagree with examples, individual citations, or all the citations, may request that differences be resolved through IDR.

It is to everyone's benefit that the process for reviewing disputed citations occurs as quickly as possible. The facility must follow the time frames below if the provider is requesting IDR:

(1) Timeframes and Procedures for Requesting IDR

(a) A facility that wishes to request in-person, telephonic or desk review must:

- Request IDR by the **tenth calendar day** following receipt of the SOD (or the first working day if the due date is on a weekend or holiday). The day the facility receives the SOD is Day 0; and

- Provide supporting documentation to MPRO by the **tenth calendar day** following receipt of the SOD (or the next working day if the due date is on a weekend or holiday). The day the facility receives the SOD is Day 0.

Materials received after Day 10 will not be considered during the IDR review.

(b) The request for IDR should be made by FAX and directed to BQA Central Office, Attention: IDR Intake. (Phone and FAX numbers are listed at the end of this memo. The fax line is available 24 hours/day). **The request for IDR should also be included in the IDR review packet received by MPRO on or before Day 10.**

(c) The request for IDR must be on a fully completed IDR Request Form (DDE-2514, Revised 2006) appended to the SOD transmittal letter.

(d) Upon receipt of the request for IDR, MPRO will note the type of review requested (desk, telephonic, or in-person) and assign an IDR reviewer.

(e) The facility should mail the IDR review packet to MPRO at 22670 Haggerty Road, Suite 100, Farmington Hills, MI, 48335-2611, Attention: IDR Review Specialist.

NOTE: The State Operations Manual allows facilities ten calendar days from receipt of the SOD to submit a written request for IDR, and to document why they are disputing specific federal deficiencies. The CMS-2567 survey packet must be sent to the federal Centers for Medicare and Medicaid Services (CMS) within 45 days of the date of exit. This short time frame means that

requests for IDR and supporting documentation received by MPRO after Day 10 will not be considered for IDR.

(2) Submitting Documentation to MPRO:

(a) **The IDR review packet must include:**

- **A fully completed IDR Request Form (DDE-2514 Revised 2006) appended to the SOD transmittal letter;**
- An original signed Wisconsin IDR Service Agreement form;
- Two copies of the SOD without a Plan of Correction; and
- Two complete copies of your supporting documentation for IDR review.

(b) When submitting supporting documentation to MPRO, the facilities must include the following information:

- The specific reason *each* federal tag or state code is being disputed, e.g., disagreement with the tag or code that was chosen, disagreement with the state classification, availability of supporting information that disputes or further clarifies the facts, or errors in documentation on the SOD. Reasons for dispute must be highlighted on submitted documents, or a cover letter must be included detailing the points of contention, or both.
- The desired outcome for *each* disputed federal tag and state code, e.g., withdraw the citation, change state classification, withdraw specific examples, or change federal tag or state code.
- The relevance of the documentation to the dispute. Material that does not highlight or identify specific entries to be reviewed for each disputed citation, or that does not explain the relevance of the documentation to the dispute will not be considered. The facility should explain why the material was not shown to the survey team during the discussion of survey findings.

Note: If requested, MPRO will sign and return a Business Associate Agreement received from a facility requesting a telephonic or in-person review. Please mail a Business Associate Agreement directly to MPRO, 22670 Haggerty Road, Suite 100, Farmington Hills, MI, 48335, Attention: IDR Project Specialist.

(3) The IDR Session

(a) The type of IDR review will depend on your selection on the IDR request form, with the following exception:

- If IDR is requested, MPRO will conduct only desk reviews for federal citations at a scope and severity level of A, B, and C - Grid Level l citations, and state stand-alone correction orders and notations.

(b) Two qualified reviewers will review citations of substandard quality of care, immediate jeopardy, **conditions of participation, and repeat standards** in order to agree upon a decision.

(c) A facility may request a review by a consultant with expertise related to specific concerns that are identified in the statement of deficiency. MPRO will provide these consultants and bill the facility for their services at a rate of $105.00 per hour, with a ½ hour minimum of review time. Please refer to the **Wisconsin IDR Service Agreement document** attached to this memo.

(d) After receiving a timely request for an in-person or telephonic IDR, the MPRO IDR Reviewer will schedule the meeting as soon as practicable. If schedules conflict, the call or meeting will be held on a mutually-agreed-upon date**.** The MPRO IDR Reviewer will choose the site of the IDR meeting. MPRO IDR Reviewers will share some travel responsibility but may choose to conduct some cases at the nearest public meeting place (library, schools, universities), at the facility requesting the IDR, a regional office, or their homes, which may allow them to conduct several cases on the same day. They may at times travel to other regions to conduct IDRs. MPRO's policy will allow its IDR Reviewers to meet their obligations with flexibility.

(e) The IDR meeting will be limited to one hour, unless the MPRO IDR Reviewer agrees to an extension. The duration of the IDR will be established prior to the start of the IDR based on the number and complexity of identified issues. To make the best use of the available time, facilities are encouraged to prioritize their concerns and present new information succinctly.

(f) The IDR meeting is intended to be an open, good faith negotiation between parties who wish to resolve their differences. The purpose of this conference is to allow the facility to provide a brief overview of the material it has submitted, and to answer any questions that MPRO may have about the material. This is an informal meeting or phone conference. The MPRO IDR Reviewer will describe the purpose of the meeting. The provider may explain how and why it disagrees with the survey team's conclusions. The provider should be able to identify the

specific parts of the Statement of Deficiencies with which he/she disagrees. The disagreement may be with either statement of fact or surveyor conclusions.

(g) **BQA Regional Field Operation Directors (or their designees)** and/or attorneys representing the facility may participate in the IDR. In some cases, an Ombudsman from the Board on Aging and Long-Term Care, a representative from CMS or WDHFS, or a MPRO project manager may request to attend an IDR. The MPRO reviewer will inform facilities prior to, or upon convening, the IDR if an Ombudsman, federal representative or MPRO manager will be present. The IDR session can be taped by any party wishing to do so. In this case, a copy should be made available to the other party. All participants will be notified at the start of the IDR that a tape is being made, and that a copy of the tape will be made available to those wishing a copy. A copy of the tape and its transcription, if transcribed, will be made a part of the permanent record.

(4) Post-IDR Session

(a) MPRO will submit their IDR recommendations to the appropriate BQA Regional Office no later than **21 calendar days** following receipt of the SOD.

(b) As directed by CMS, BQA will retain the responsibility to review, and the authority to overturn, MPRO's IDR recommendation(s). BQA will review the recommendation(s) and will communicate the final IDR decision, including MPRO's recommendation(s) to the facility no later than **24 calendar days** following receipt of the SOD. **A copy of the MPRO Independent Review Recommendation will be sent to the facility upon completion of the IDR process.**

(c) Amending the Statement of Deficiency: When changes are made to the SOD, the MPRO IDR Reviewer will ask whether the facility is requesting a "clean" SOD rather than an "amended" SOD. The request for a "clean" SOD MUST be made at this time. A "clean" SOD means the original SOD is withdrawn and a second SOD is generated by the computer after the changes have been entered into the system. A facility is responsible for ensuring its Plan of Correction is transferred to the "clean" SOD. A "clean" SOD will not be generated for superficial errors or minor inconsistencies in the SOD such as:

- A minor typographic error;
- A staff, resident or surveyor identifier number is incorrect (it may be appropriate to clarify and update the identifier list), or

- For simple wording changes, e.g., the facility desires language to read "rule out possible pulmonary emboli" rather than what was stated on the SOD as "rule out pulmonary emboli."

In these cases, or where a request is not made by the facility for a "clean" SOD, BQA will revise its survey findings by amending the original SOD. An amended SOD means that additions or deletions are made on the original SOD by crossing out or inserting text, and noting in the margin of the SOD that the changes are the results of IDR. .

For SODs alleging a Class A, B, or C violation, any appeal of the original SOD is eliminated when the original SOD is withdrawn. An appeal of the original SOD does not carry over or transfer to the "clean" SOD. The facility must file a new request for hearing if the "clean" SOD is subject to appeal and the facility wishes to appeal it.

(5) Availability of IDR

(a) For both nursing homes and FDDs, the availability and use of IDR:

- Applies to all citations issued by BQA. It does not apply to a re-cited citation where (a) the re-cited facts are identical to the facts on the previous citation; and (b) the previous citation has already gone through IDR. In general, this exception will apply to structural deficiencies. For example, a facility that was re-cited for not replacing an improperly rated fire door could not request a second IDR because the situation ("the door") remained the same. On the other hand, a facility may be able to request IDR on a re-cited activity deficiency because activities are fluid and changeable. A re-cited deficiency will have different facts because it may address different residents, different frequencies of participation, or different activities in which a resident did or did not participate. Upon receipt of an IDR request for a citation for which IDR is not applicable, BQA will notify MPRO**.**

- Applies to any new citation issued as a result of IDR. A "new" citation means a deficiency or violation (a) that was not known before the IDR, because new facts were learned during the IDR; or (b) that was substantially changed as a result of IDR. A deficiency is substantially changed when facts are materially altered and the information is cited under a different federal or state regulation. Upon receipt of an IDR request for a citation for which IDR is not applicable, BQA will notify MPRO.

- Does not prevent providers licensed under ch. HFS 132 or ch. HFS 134 from filing a formal state appeal under section 50.04(4) (e), Wis. Stats. Appeals must be made within ten calendar days of receipt of the SOD. If, as a result of IDR, a facility continues to disagree with BQA's decisions, the appealed citations will remain in dispute and may proceed to full litigation and hearing.

As stated in paragraph (4) (b) and (c) above, the issuance of a "clean" SOD results in withdrawal of the original SOD. The original appeal does not transfer automatically to the new "clean" SOD. A new state appeal request is required if the facility wishes to appeal the "clean" SOD.

- Does not exempt a facility from submitting an acceptable Plan of Correction for each citation within ten calendar days from receipt of the SOD.

- An acceptable Plan of Correction must explain how deficient practices will be corrected vis-à-vis residents identified on the SOD, how other residents who are at risk will be identified, what measures will be put into place to ensure that the deficient practice will not recur, and how the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur.

- No Plan of Correction from any licensed provider may malign an individual. Failure to submit an acceptable Plan of Correction for each federal tag and state code will prompt the Bureau to initiate a recommendation for termination of the provider agreement, revocation of state license, or both. For federally certified nursing homes, failure to submit an acceptable Plan of Correction for a federal deficiency may also lead to the imposition of alternative enforcement remedies.

(b) For federally certified nursing homes, the IDR process cannot, in general, be used solely to challenge the scope and severity of a particular citation without challenging the underlying facts and examples containing therein. If the underlying facts and examples change as a result of IDR, a by-product of the dispute may be a change in the scope and severity designation. Scope and severity can be directly challenged without challenging the underlying facts and examples, if a change in scope and severity will change a designation of substandard quality of care, or will lower the category of a Civil Money Penalty.

IDR REQUESTS:

If you wish to request IDR, please fax the IDR intake form to:

BQA, Central Office,
Provider Regulation & Quality Improvement (PRQI) –
IDR Intake, Attention: Gail Hansen
Ph: 608-266-2966
Fax: 608-267-7119

REGIONAL FIELD OPERATIONS DIRECTORS (RFODs)

For all other issues related to the survey and enforcement process, please contact the appropriate Regional Field Operations Director. Contacts are listed below:

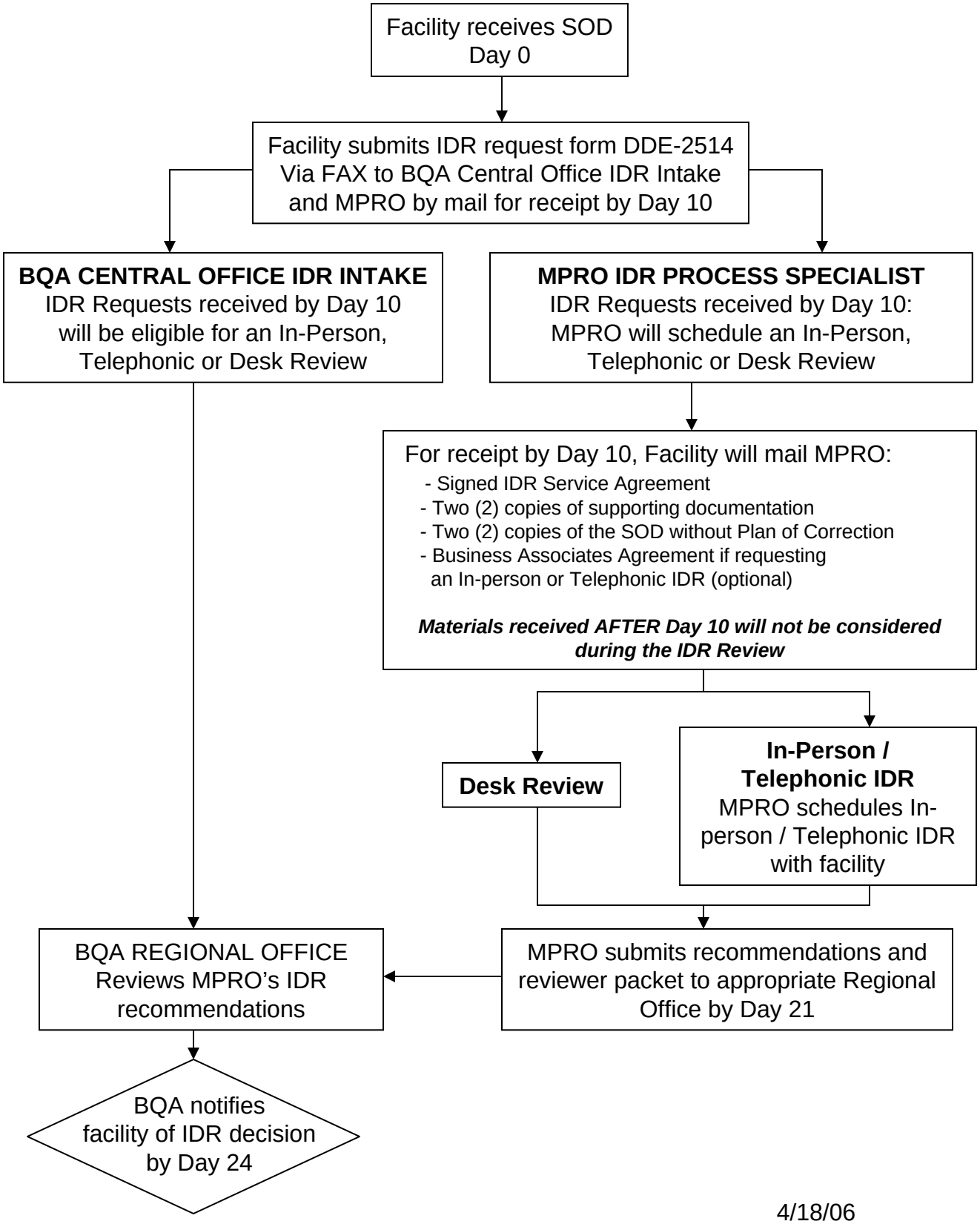
Joanne Powell	Northeastern Regional Office 200 North Jefferson Street, Suite 211 GREEN BAY, WI 54301	(920) 448-5249 FAX (920) 448-5254 PowelJM@dhfs.state.wi.us
Joanne Powell	Northern Regional Office 1853 N. Stevens Street, Suite B RHlNELANDER WI 54501	(715) 365-2802 FAX (715) 365-2815 PowelJM@dhfs.state.wi.us
Katherine Friend	Southeastern Regional Office 819 N. 6th Street, Room 609B MILWAUKEE WI 53203	(414) 227-4908 FAX (414) 227-4139 FrienKA@dhfs.state.wi.us
Pat Virnig	Southern Regional Office 2917 International Lane, Suite 210 MADISON WI 53704	(608) 243-2379 FAX (608) 243-2389 VirniPE@dhfs.state.wi.us
Joe Bronner	Western Regional Office 610 Gibson Street, Suite 1 EAU CLAIRE WI 54701	(715) 836-4753 FAX (715) 836-2535 BronnJA@dhfs.state.wi.us

Attachments:

- **Attachment A – IDR Process Flow Chart**
- **Attachment B - Informal Dispute Resolution Request Form DDE-2514 (Revised 2006)**
- **Attachment C – Wisconsin IDR MPRO Service Agreement Form**

This memo with attachments can be accessed on the Internet at:
http://dhfs.wisconsin.gov/rl_DSL/Publications/BQAnodMems.htm

IDR Process Flow Chart – Attachment A



4/18/06

DEPARTMENT OF HEALTH AND FAMILY SERVICES **STATE OF WISCONSIN**
Division of Disability and Elder Services
DDE-2514 (Rev. 5-06)

INFORMAL DISPUTE RESOLUTION REQUEST

The information collected on this form is used for the informal dispute resolution (IDR) process. Completion of this form is not required by statute, however, the following information must be provided, as described below, if you wish to request informal dispute resolution. If you have questions about completion of this form or the informal dispute resolution process, see BQA memo number 06-005 or contact the IDR Intake Coordinator at 608-266-2966.

1. Complete and FAX this form to:

IDR INTAKE

BQA FAX 608-267-7119

2. SUPPORTING DOCUMENTATION must be forwarded to MPRO, **within ten (10) days of receipt of the Statement of Deficiencies.** Materials received after day 10 will **NOT** be considered and the IDR review will not proceed.

Name – Facility	Facility License No.	Date SOD Received	Date Request Submitted
Facility Mailing Address		Federal SOD Number	State SOD Number
City	Zip Code		
Contact Person	Telephone Number	Event ID Number	Was IJ, SQC, Condition or Repeat Standard Cited? ☐ Yes ☐ No
Type of Review Requested ☐ Telephonic ☐ In-Person ☐ Desk Review	The provider's legal counsel will be involved in the IDR process. ☐ Yes ☐ No The Service Agreement is included. ☐ Yes ☐ No	Location of BQA Regional Office ☐ Eau Claire ☐ Green Bay ☐ Madison ☐ Milwaukee ☐ Rhinelander	If Yes, List Tag Number(s)

Enter the disputed Federal and State tags or codes and the PRIMARY reason for requesting IDR (from the following list) in the space below. Enter only ONE reason for each tag / code. Facilities may not use the IDR process to challenge scope and severity assessments of deficiencies unless the scope and severity assessment constitutes Immediate Jeopardy (IJ) or Substandard Quality of Care (SQC).

01 Errors in Citation Details
02 Incorrect Scope – only if IJ or SQC
03 Incorrect Severity – only if IJ or SQC
04 Wrong Tag / Code
05 New Information Available
06 Code Interpretation
07 Other (Explain)

Tag / Code Scope and Severity	Reason for IDR	Tag / Code Scope and Severity	Reason for IDR

Facility Service Agreement with MPRO for Wisconsin IDR

Description of Work:

MPRO agrees to act as an impartial, third party reviewer for second-level Informal Dispute Resolution (IDR) reviews. Each IDR review will be completed by at least one qualified IDR reviewer. A determination/decision will be submitted to the Bureau of Quality Assurance (BQA) by the required deadline, contingent upon the receipt of (1) an original or faxed signed service agreement, and (2) your review materials/ documents, including the Statement of Deficiency (SOD) without a Plan of Correction. Please include two complete copies of your review materials. Citations of substandard quality of care or immediate jeopardy will be reviewed by two nurses for a consensus decision.

Payment:

By virtue of your request for a desktop, telephonic, or in-person IDR review, you agree to pay for each tag reviewed according to the following payment schedule:

▪ Desk review base fee per type of tag (F, S)	$200 (BQA will pay 100%)
▪ Telephone review base fee per tag	$225 (BQA will pay $200, provider pays $25)
▪ In-person review base fee per tag	$375 (BQA will pay $200, provider pays $175)
▪ Rate per hour of actual travel	$72 (in addition to base fee when travel is required)
▪ Consultant reviewer hourly rate	$250 (BQA pays $145, provider pays $105; ½ hour minimum when requested/required
▪ Travel expenses (lodging, meals, mileage)	According to approved State of Wisconsin guidelines and fee schedule listed above

MPRO will mail an invoice upon completion of the requested review and payment is due within 30 days of the invoice. Please make your check payable to MPRO and mail to the address below with Attention: Financial Services. MPRO reserves the right to request pre-payment.

Cancellation Policy:

You may cancel an IDR request at any time. If review work has begun on the IDR request, you agree to pay the full base fee amount as listed above, plus reviewer time ($145/hr) and consultant time ($250/hr) that occurred prior to our cancellation. You also agree to reimburse MPRO for any travel expenses resulting from your IDR request. BQA will not pay for any expenses if an IDR request is cancelled. MPRO will mail an invoice detailing review time and travel expenses that have accrued as a result of your cancellation. Payment is due within 30 days of the date of the invoice to the address below. **Please fax your cancellation request to MPRO at (248) 305-7093, Attention: IDR Project Specialist between 7:00 a.m. to 3:30 p.m. (CST), Monday through Friday.**

Indemnification:

You also agree to indemnify and hold MPRO, its directors, officers, employees, physicians, consultants and agents harmless from and against any claims, causes of action, liabilities, costs and/or expenses of any kind arising out of MPRO's performance of its responsibilities under this agreement associated with any lawsuit against said company, agents and physicians.

Confidentiality:

MPRO agrees to treat all information received in the course of its review activities as confidential with respect to persons or entities, with the exception of designated administrators of your facility for communication purposes. MPRO further agrees that such confidential information may not be used for any purpose by MPRO except to fulfill its review obligations.

Instructions:

Please enclose the original, signed, service agreement with two (2) copies of your IDR review materials to MPRO, at the address below, Attention: IDR Review Specialist. MPRO will initiate the review upon receipt of this signed agreement and your review materials. Please note that BQA will not delay enforcement actions pending an IDR review.

The parties have caused this Service Agreement to be signed by their duly authorized representatives and to be effective as of the date signed.

Facility:	_____	Facility:	MPRO
Signature:	_____	Signature:	_____
Print Name:	_____	Print Name:	Debra L. Moss, MD, MBA
Title:	_____	Title:	President and CEO
Date:	_____	Date:	_____

Effective date 10/03/05 Revised 10/03/05